NOTE

THE EXTENSION OF LEGAL SERVICES UNDER THE ECONOMIC OPPORTUNITY ACT

INTRODUCTION

The Congressional Statement of Findings and Declaration of Purpose in a preamble to the Economic Opportunity Act of 1964[1] presents a mandate to the Office of Economic Opportunity (OEO). The Office is "to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity . . . to live in decency and dignity." The drafters of the act envisioned a broad scale attack on the causes and effects of poverty. Included in its arsenal is the extension of legal services to the poor through the development of existing forms, and the creation of new ones.[2]

The objectives of the Legal Services Program under the act are:

> First. To make funds available to implement efforts initiated and designed by local communities to provide the advice and advocacy of lawyers for people in poverty.

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[1] 78 Stat. 508 (1964), 42 U.S.C. §§ 2701-2981 (1964) "Community Action Programs," in which legal services could be included, are authorized by §§ 2781-82:

§2781. Statement of purpose

The purpose of this part is to provide stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty through community action programs.

§2782. Definition of community action program; additional criteria

(a) The term "community action program" means a program—

(1) which mobilizes and utilizes resources, public or private, of any urban or rural, or combined urban and rural, geographical area (referred to in this part as a "community"), including but not limited to a State, metropolitan area, county, city, town, multicity unit, or multicounty unit in an attack on poverty;

(2) which provides services, assistance, and other activities of sufficient scope and size to give promise of progress toward elimination of poverty or a cause or causes of poverty through developing employment opportunities, improving human performance, motivation, and productivity, or bettering the conditions under which people live, learn, and work;

(3) which is developed, conducted, and administered with the maximum feasible participation of residents of the areas and members of the groups served; and

(4) which is conducted, administered, or coordinated by a public or private nonprofit agency (other than a political party), or a combination thereof.

[2] U.S. Office of Economic Opportunity, Guidelines for Legal Services Programs 1 (1966).

> Second. To accumulate empirical knowledge to find the most effective method to bring the aid of the law and the assistance of lawyers to the economically disadvantaged people of this nation. OEO will encourage and support experiment and innovation in legal services proposals to find the best method.
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> Third. To sponsor education and research in the areas of procedural and substantive law which affect the causes and problems of poverty.
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> Fourth. To acquaint the whole practicing bar with its essential role in combating poverty and provide the resources to meet the response of lawyers to be involved in the War on Poverty.
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> Fifth. To finance programs to teach the poor and those who work with the poor to recognize problems which can be resolved best by the law, and lawyers. The poor do not always know when their problems are legal problems and they may be unable, reluctant, or unwilling to seek the aid of a lawyer.[3]

Although there is an abundant supply of literature on individual facets of legal services to the poor, no article has attempted to set forth the entire picture. This note is not meant to be a critical evaluation of the program. Rather it is an attempt to present the potentiality of the Economic Opportunity Act viewed in the context of its historical background, with consideration being given to existing services, the alternatives available, and the type of service most frequently being funded by the Office of Economic Opportunity. Also included is a brief discussion of some of the problems that may be encountered if the congressional mandate is implemented to its fullest extent.

Historical Development of Provisions for Legal Service to the Poor

A. *Great Britain*

The first British legal aid statute, passed in 1496,[4] authorized the Chancellor to allow indigent plaintiffs to proceed *in forma pauperis* in a court of record. Those utilizing this procedure were entitled to the free services of a solicitor or a barrister and were permitted to file pleadings without charge. In 1729 the right of proceeding *in forma pauperis* was extended to other classes of defendants.[5] Not long after the passage of the first legal aid statute, Christopher Saint Germain, in 1563, recognized the right of indigents to have counsel appointed to represent them in appellate proceedings[6]

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[3] *Id.* at 2-3.

[4] 11 Hen. 7, c. 12. (1496).

[5] 2 Geo. 2, c. 28, 8. (1729).

[6] Heidelbaugh and Becker, "Benefit of Counsel in Criminal Cases in the Time of Coke," 6 Miami L.Q. 546, 549.

a right which American courts did not recognize until 1963.[7] The gradual extension of free legal services reached a culmination in the passage of the National Legal Aid and Advice Act which extended services to all who could not afford to pay a fee commensurate with the value of the services rendered.[8]

B. *United States*

A tradition of providing private assistance to indigents developed at an early date in the United States, and has been supplemented by the development of Legal Aid and Defender Societies, and Lawyer Referral Systems.

Although the sixth amendment has always specified a right to counsel, recent decisions of the United States Supreme Court,[9] the passage of the Criminal Justice Act,[10] and the Economic Opportunity Act all point to contemporary awareness that "equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion."[11] The concept of equality before the law necessarily includes the extension of legal services to the poor.

THE LEGAL PROBLEMS OF THE POOR

Senator (then Attorney-General) Robert F. Kennedy, in a Law Day address given at the University of Chicago Law School, described poverty as "a condition of helplessness—of inability to cope with the conditions of existence in our complex society. . . ."[12] The inability to cope with complexities of our society is largely the result of an underlying problem of the poor—ignorance. This ignorance is

7 Douglas v. California, 372 U.S. 353 (1963).

8 Legal Aid and Advice Act, 1949, 12 & 13 Geo. 6, c. 51.

9 See Draper v. Washington, 372 U.S. 487 (1963), holding that an indigent criminal defendant has the right to a transcript for appellate purposes when defendant was convicted by a state court; Coppedge v. United States, 369 U.S. 438 (1962), holding that an indigent defendant is entitled to a transcript for appellate purposes where defendant was convicted by a Federal District Court; Douglas v. California, *supra* note 7, expanding the right to counsel to the appellate level; Gideon v. Wainwright, 372 U.S. 335 (1963), holding that the fourteenth amendment includes the sixth amendment right to counsel; Griffin v. Illinois, 351 U.S. 12 (1956) holding that a state may not grant appellate review in such a way as to discriminate against some convicted defendants because of their indigence; Edwards v. California, 314 U.S. 160 (1941), upholds the right of indigents to travel from state to state.

10 Criminal Justice Act of 1964, 78 Stat. 552, 18 U.S.C. § 3006 A (Supp. 1964).

11 Justice Rutledge, Address to the American Bar Association, in Allison and Seymour, "The Supreme Court and the Doctrine of Right of Counsel," 46 J. Am. Jud. Soc'y 259, 265 (1963).

12 The entire address is reprinted in 13 U. Chi. L.S. Rec. 24 (1965).

of two kinds: (1) ignorance of the possibility that legal advice might be helpful and of legal remedies available; (2) a distrust of strange lawyers and ignorance as to whether and where reliable legal services can be obtained without cost or within one's limited ability to pay.[13] Generally the poor are ignorant of the complexities of the law, fearful of retaliation for involving the law, and unable to assert their rights, if they are even aware of them.[14]

The legal problems of the poor are, of course, numerous. In the area of consumer credit, for instance, the poor are often induced to obtain credit by the unconscionable conduct of lenders and sellers and then threatened with loss of livelihood through the means used for collection.[15] Other common problem areas are landlord-tenant relationships, family law, governmental abuses of basic rights involving welfare, schools, and public housing. Nevertheless there are many who contend that the "legal" problems of the poor are either non-existent or merely *de minimis* in substance. Such assertions are undoubtedly correct if meant to imply that not all the problems of the poor are legal in nature. However, an extended examination of the so-called "poverty" literature should convince even the most cynical that the poor do indeed have the kind of "legal" problems described thus far.[16]

Justice through law and the courts, as perceived by low income groups is aptly characterized by the Latin expression *de minimis non curat lex*.[17] Their attitude is that courts and lawyers do not know nor care about them.[18] As a result the legal problems of the poor never reach a contested or judicial proceeding where the complainants are most likely to receive just redress of grievances.[19] Thus, a welfare recipient whose check is withheld without explanation or a juvenile who is summarily excluded from a public school usually will not seek the help of an attorney. His only "counsel" is usually a friend or parent who, of course, is not qualified to protect whatever rights he may have. In practical effect the poor are denied the "justice through

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[13] Address by Archibald Cox, to the Illinois State Bar Association, June 18, 1965, on file with the Office of Economic Opportunity.

[14] 1 Congressional Presentation, Office of Economic Opportunity 63-64 (1965).

[15] See Caplovitz, The Poor Pay More (1965).

[16] See Treback, The Rationing of Justice (1964); Kelso, "Poverty's Other Exit," 41 N.D.L. Rev. 147 (1965); Note, "The Enforcement of Municipal Housing Codes," 78 Harv. L. Rev. 801 (1965); Note, "Retail Credit Sales and Usury," 24 La. L. Rev. 822 (1964).

[17] The law cares not for, nor takes notice of, very small or trifling matters.

[18] Shriver, "The OEO and Legal Services," 51 A.B.A.J. 1066 (1965).

[19] E. and J. Cohn, "The War on Poverty A Civilian Perspective," 73 Yale L.J. 1317, 1336 (1964).

law" enjoyed by their more affluent neighbors as a result of social conditions over which they have little real control.

The Economic Opportunity Act is not intended to immediately solve all the legal problems confronting the poor. What is envisioned by the Director is a close inter-relationship of the various components within the program. In this sense the programs will try to promote the high degree of cooperation which is characteristic of the relationship in Britain between the members of the legal profession and the members of the National Advisory Boards. Indeed one of the significant results of the extension of legal services to the poor under the act is that it tends to end the lawyer's isolation by integrating his skills with those of other professionals such as the social worker and the psychiatrist.[20]

The areas within which legal advocacy and analysis are especially effective in alleviating the legal problems of the poor are:

A. The rendering of traditional legal assistance in establishing or asserting clearly defined legal rights.
B. Legal analysis and representation directed toward reform where the law is vague or destructively complex.
C. Legal representation where the law appears contrary to the interests of the slum community.
D. Legal representation where no judicially cognizable right can be asserted, and in contexts which appear to be non-legal.[21]

Existing Services Providing Legal Aid to the Poor

Traditionally lawyers have attempted to supply indigents with legal services on a reduced-fee or no-fee basis. Although this arrangement may have been satisfactory at one time, it is grossly inadequate today. As the population of poverty stricken areas increases, the number of potential legal problems increases. Also, in addition to all the familiar legal problems of the poor, current federal, state and local legislation is creating many new legal rights which primarily pertain to the indigent. The result is that the amount of potential litigation involving indigents has expanded far beyond that which can be handled by beneficent members of the bar.

National Legal Aid and Defender Societies are incapable of meeting this increasing need. In 1964, more than one-half million applicants received legal assistance from 246 legal aid offices and

20 Caplan and Johnson "Neighborhood Lawyer Programs," 20 U. Miami L. Rev. 184, 187 (1966).

21 E. and J. Cohn, *supra* note 19.

139 defender services.[22] But this falls far short of Legal Aid's own estimate[23] that one-third of the thirty-five million indigents in this country need help with legal problems.[24] Legal aid serves only a fraction of these people.[25] The President of the National Legal Aid and Defender Association has stated:

> The harsh fact is that in the United States today, just as many indigent persons are deprived of legal assistance as receive it. Too often troubled people find that Legal Aid does not really exist in their community or that it is fenced off from them by too stringent eligibility rules, anachronistic policy on the types of cases handled, lack of publicity, insufficient staff, personnel or unconscionable delays in service. Too often within the inner city there is but an illusion of service—an attractive facade.[26]

Legal Aid has been criticized because of the negative impact of habit and settled bureaucratization.[27] That is, legal aid is thought by some, perhaps because of its dependency upon private donations for its existence, to have become too entrenched and satisfied with the work it is now doing. It is often felt that most legal aid societies are reluctant to provide services for a group of residents who may as a group have a valid complaint, but who individually would fail for lack of substantial injury. Again because of their dependency on private funds most legal aid agencies have been reluctant to handle the type of cases likely to result in the condemnation of the agency by its benefactors, *e.g.*, divorce cases. Legal aid organizations have also been criticized for their essentially charitable character. Their aid is often dispensed as a magnaminous bestowal of favors by the affluent upon subservient recipients.[28] A suggested solution to this latter problem is to encourage "maximum feasible participation"[29] by the poor themselves in programs for their betterment. Argument is also made that centralized Legal Aid offices are frequently inaccesible as a practical matter and unknown to the people who need them. Finally it is said that existing legal aid agencies have failed to effectively educate the poor concerning their legal rights and

22 1964 Summary of Conference Proceedings of the National Legal and Defender Association, Report of the President 62 (1964).

23 Brownell, Legal Aid in the United States 81 (1951).

24 *Ibid.*

25 Report of the Commission on Legal Aid of the Bar Association of the District of Columbia 140 (1958).

26 1964 NLADA Report, *supra* note 22.

27 *Cf.* Grosser "The Need for a Neighborhood Legal Service and the New York Experience." H.E.W. Conf. Proc. 73, 76 (1964).

28 Frankel, "Experiments in Serving the Indigent," 51 A.B.A.J. 460, 461 (1965).

29 See also S. Rep. No. 12, 18, 88th Cong., 2d Sess. 18-19 (1964).

obligations.[30] One reason for this situation is that lawyers in legal aid offices are often carrying twice the recommended maximum caseload.[31]

If the individual lawyer and the legal aid agencies are unable to cope with the legal needs of the poor, do lawyer referral programs fill the gap? The question must be answered in the negative. Lawyer referral services are designed for the lower middle classes, not the rock-bottom poor.[32] Even on this income level there are indications that the need is not fully being met. Only 17,000 out of 300,000 lawyers in the United States participate. One hundred and five major population centers have no referral service at all. The service in many others is inadequately planned or financed.[33]

Lawyer referral services are a function of the organized local bar which seek to serve the local public. They are designed to reach those who are not totally indigent. The usual lawyer referral agency operates with a voluntary membership of attorneys who consult with a referred individual at a set fee for a half-hour interview. If the individual has a meritorious cause, the lawyer enters into a fee arrangement with his client regarding the services to be performed.[34] Since the individuals who utilize lawyer referral services are capable of paying some fees they are not members of the social class with which the Economic Opportunity Act is concerned.

A Possible Solution Under the Economic Opportunity Act

The Office of Economic Opportunity neither formulates programs for local communities nor specifies the exact nature of programs which should be initiated.[35] Nevertheless, the emerging form of legal service being funded by OEO is the neighborhood law office.[36] This concept originated in the Philadelphia Neighborhood Law Office Plan, which has been serving the low-middle income group for the past quarter of a century.

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30 Frankel, *supra* note 28.

31 Cox, *supra* note 13.

32 Lawyer Referral Services Handbook 5 (1958).

33 Christensen, "Lawyer Referral Services—An Alternative to Group Legal Services," 12 U.C.L.A.L. Rev. 341, 343-45 (1965).

34 Carrington, "Lawyer Referral, Other Bar Services," 45 J. Am. Jud. Soc'y 317 (1962).

35 U.S. Office of Economic Opportunity, Tentative Guidelines for Legal Proposals to the Office of Economic Opportunity 1 (1965).

36 See, Rauh, Legal Services Program, Funded Projects to Date, (1965). Seventy-six projects in twenty-six states have been funded at a total budget of $10.7 million. *Time*, Vol. 87 No. 18, May 6, 1966.

The Philadelphia Plan has as its main purpose the bringing of competent attorneys to people in the low-middle income group. For the past eight years the plan has been a service of the Philadelphia Bar Association. This service operates under the sole supervision of the Philadelphia Bar and receives no outside financial subsidy. Recent statistics show that eighty-two percent of those who first availed themselves of the service had never before consulted a lawyer. Another recent survey reported that 61 of the 100 clients interviewed stated that they would not have gone to a lawyer if there had not been a neighbor-office at hand.[37] The success of this venture suggests that this group, which could afford to pay modest fees for legal services, had not been receiving adequate legal services. It also indicates that a neighborhood law office in a poverty district could do much to end indigents' alienation from the law and from adequate legal services.

Generally when a program has been funded by the OEO, a community action agency[38] has applied for the funds; however, this is not an absolute requirement, since the act provides that grants can be made directly to legal service programs when it can be shown that it is not possible, with reasonable effort, to coordinate activities with the local community action agency.[39] Nevertheless, because of the interrelated needs of those being served, it is considered desirable that a community action agency be developed, initiate the project, and apply for the funds to inaugurate the project.

Under the terms of the act, except in the poorest 182 counties in the United States and in experimental projects, the local community must pay at least ten percent of the cost of the program, with OEO paying the balance. The ten percent is in addition to a community's previous expenditures for similar services on behalf of the poor, which must be maintained at the same level. The local share need not be in cash and can be in the form of rent-free offices, furniture or other equipment, or professional services.[40]

In order to be funded by OEO, each applicant and delegate agency must execute a written promise that its entire program will be conducted in accordance with the Civil Rights Act of 1964[41] and the

[37] Abrahams, "Twenty-five Years of Service," 50 A.B.A.J. 728-29 (1964).

[38] A community action agency is a broadly-based local body designed to unite the efforts of institutions and groups concerned with the alleviation of poverty in the local community.

[39] See note 2, *supra* at 6-7.

[40] Address by Theodore H. Berry to the National Conference on Law and Poverty, June 25, 1965, in GSA Doc. 65-20273, 5. See also note 2 *supra* at 15-16.

[41] 78 Stat. 241 (1964), 42 U.S.C. §§ 1971, 1975(a)-(d), 2000(d)-(h)6 (1964). (1964).

Civil Rights Regulations of the Office of Economic Opportunity.[42] These provisions require that no person be denied services or employment on the grounds of race, color, or national origin.[43]

The services which the neighborhood law offices are expected to offer include those now being offered by legal aid and defender societies. In addition, it is contemplated that the offices will try to represent the inhabitants of the neighborhood before government bureaucracies dealing with their problems, with emphasis on those cases which will have a broad impact on the quality of living for the people of the neighborhood. It is anticipated that these local offices will be able to establish an effective preventive legal education program which will serve to acquaint the residents of the neigborhood with their legal problems and what can be done about them.[44]

The preventive legal education program could be one of the most significant contributions of the neighborhood law office. The following are recommended provisions of the educational program:

1.) publications outlining legal rights and obligations
2.) evening office hours
3.) workshops to deal with the legal problems of the poor
4.) adult education classes with courses in "everday law"
5.) development of model agreements such as contracts and leases to be utilized as guides by the residents of the area.[45]

Problems That May Be Encountered in Extending Legal Services to the Poor Under the Economic Opportunity Act

Under the act, a project to be funded by OEO must be "developed, conducted, and administered with the maximum feasible participation of residents of the areas and members of the groups served."[46] Understandably such broad language gives rise to considerable consternation among individual members of the bar and suggests possible violations of the Canons of Ethics of the American Bar Association. However, it should be noted that the act does not command that residents be represented on the board of directors, although the OEO suggests that they be so represented.[47] Arguably the statute's requirements would be satisfied if the indigent residents were placed on "advisory" committees. It

42 45 C.F.R. § 1010.4 (1965).

43 See note 2 *supra* at 17.

44 Sparer, "Education on New York's Lower East Side," H.E.W. Conf. Proc. 122 (1964).

45 Caplan and Johnson, *supra* note 20 at 189-90.

46 42 U.S.C. 2782(a)(3) (1964).

47 See note 2 *supra* at 11.

is not likely, however, that such "token" representation would satisfy the more vigorous proponents of the programs. Therefore, it is necessary to examine the impact of the Canons on this section and on the neighborhood program as a whole.

The Canons which might pose a problem in the extension of legal services to the poor under the act are those relating to barratry,[48] to law intermediaries,[49] to the confidentiality of the attorney-client relationship,[50] and to the unauthorized practice of law.[51]

Two recent Supreme Court cases have dealt with some of these problems. These cases indicate a growing awareness on the part of the Court of the problems of the indigent and display a tendency by the Court to sanction efforts to alleviate those problems even if it necessitates the amending of the Canons of Ethics. In *NAACP v. Button*,[52] the Court held that no unprofessional solicitation was involved when lawyers were hired by an association to bring to the attention of prospective suitors the availability of a paid staff of lawyers to conduct litigation to enforce civil rights, especially the right to equal protection of the laws under the fourteenth amendment. In the *Button* case, the Court also emphasized the lack of economic competition among lawyers for civil rights litigation.[53] In the second case, *Brotherhood of Railroad Trainmen v. Virginia*,[54] the Court reached a similar conclusion where a union sent representatives to visit injured workers and referred them to union-selected lawyers for representation in suits involving the Federal Employers Liability Act.[55] Both the NAACP and the associations were held not to be "lay intermediaries" between the lawyers and the member litigants on the ground that the first amendment protects the right of social minorities or economically disadvantaged groups to join forces to protect their legal rights.[56]

Despite these holdings, Canon 35 still appears to present the chief obstacle to the operation of the neighborhood law office because of section 2782(a)(3) of the act which provides for "maximum feasible participation."[57] However, Canon 35 provides a possible

[48] American Bar Association, Canons of Professional Ethics (Canons 27, 28).
[49] American Bar Association, Canons of Professional Ethics (Canon 35).
[50] American Bar Association, Canons of Professional Ethics (Canon 37).
[51] American Bar Association, Canons of Professional Ethics (Canon 47).
[52] 371 U.S. 415 (1963).
[53] *Id.* at 443.
[54] 377 U.S. 1 (1964).
[55] Wald, Law and Poverty 101-02 (1965).
[56] 371 U.S. at 431; 377 U.S. at 7.
[57] 42 U.S.C. § 2782(a)(3) (1964).

"saving" clause, for it specifically excludes from its prohibitions "charitable societies rendering aid to the indigent." Apparently this clause could relieve the neighborhood offices of the restrictions of Canon 35.

Section 2782(a)(3) may also pose a problem under Canon 47, which forbids the unauthorized practice of law. However, this section clears the obstacle of Canon 35, it should also clear Canon 47. The *Button* and *Brotherhood of Railroad Trainmen* cases both rejected the contention that if a group arranges for legal services for its members, it is engaging in the practice of law.[58] Since the act envisions a close cooperation of related service fields, a question of unauthorized practice of law may arise when those in related service fields attempt to give legal advice. This is a problem, however, for the local neighborhood program planners who should organize their plan so as to minimize this risk.[59]

Canon 37 relating to the lawyer's obligation to hold all communications of the client in confidence may well pose a problem for lawyers working in neighborhood services under the community action program, mainly because record keeping is required both by the parent community action agency and the OEO.[60] This problem may be eliminated by simply refusing to give the client's name or by developing a coded system of record keeping.[61]

Although individual members of the bar have been disturbed by the "maximum feasible participation" language and the implication of the act in general, the American Bar Association has unanimously authorized full cooperation with the Office of Economic Opportunity in the development and implementation of programs for expanding the extension of legal services to indigents.[62] This resolution, however, qualified the endorsement by the inclusion of a statement that the legal services to the poor must be "performed by lawyers in accordance with ethical standards of the legal profession."[63]

Even if one concludes that the Canons of Ethics present insurmountable obstacles, it should be realized that the Canons are not immutable and are presently undergoing a reevaluation as authorized

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58 371 U.S. at 443; 377 U.S. at 6.

59 Wald, *op. cit. supra* note 55, at 106-107.

60 See U.S. Office of Economic Opportunity, Guidelines for Legal Services Programs 25 (1966).

61 Wald, *op. cit. supra* note 55, at 107.

62 Resolution, ABA House of Delegates, February 9, 1965, 41 A.B.A.J. 393, 399 (1965).

63 *Ibid.*

by the House of Delegates.[64] The Canons which now govern the legal profession were developed in a period of history much simpler than ours today and should therefore be reappraised in the light of the contemporary increase in welfare legislation.

If the neighborhood programs are able to flourish despite restrictions imposed by the Canons, it might still be contended that they present "unfair competition" to young lawyers who gain business and experience by serving poorer clients.[65] The validity of such an assertion can only be determined in light of the eligibility standards imposed under the act. It is doubtful that there could ever be a single standard of indigency which would serve all purposes and satisfy everyone. The figure of 3,000 dollars a year for a family of four, which was given by the Council of Economic Advisers in its report to the President in 1964, and which has become the basic criteria of the poverty literature, has been seriously criticized by respected economists as being too high. A figure of 2,600 dollars is perhaps more realistic.[66]

But the economists' concern with the establishment of precise economic criteria for defining poverty may well be irrelevant, for nowhere in the provisions of the act is there an economic criterion for determining eligibility. It seems, then, that Congress intended to allow local officials to establish their own economic criteria for determining eligibility. This delegation of authority may have merit in view of the variables involved in making a determination of indigence. One variable is the cost of living within the various states. Even within a specific community indigence is a variable factor. Also the meaning of indigence in connection with the need for legal services can only be determined in the context of a particular legal problem. A man may be able to pay his rent and clothe his family, and still be eligible for free legal aid.[67] Legal services indigence, then, appears to be the inability to pay a reasonable fee for a necessary legal service after providing for the basic necessities of life.[68]

Whatever standard is adopted, it seems apparent that it should be flexible enough to allow consideration to be given to the size of the family, the health of its members, unemployment, debt and other

[64] Address by Lewis F. Powell, Jr. to the National Conference on Law and Poverty p. 15, on file with the Office of Economic Opportunity.

[65] Address by Charles J. Parker to the National Conference on Law and Poverty, June 25, 1965, GSA 4 (1965).

[66] See, Friedman, Poverty, Definition and Perspective (1965).

[67] Cummiskey "Standards of Eligibility," 24 Legal Aid Brief Case 5, 6 (1965).

[68] *Id.* at 7.

factors.[69] An earlier recommendation that a registration fee, commensurate with ability to pay be charged on an individual case basis appears to have been abandoned by the OEO.[70]

The lack of precise eligibility standards may appear to be an open invitation for the neighborhood offices to remove a large number of potential clients from the office of the private attorney. However, such fears are probably unfounded. The actual experience of the National Legal Aid Societies, for instance, has been that the private attorney is relieved of the potential financial burden of providing services to these people at little or no cost.[71] The standards should be such that no client capable of paying even a modest fee to a private attorney can qualify for the services of legal aid. Further, the offices may not accept fee-generating cases.[72] Of the legal services programs funded to date by the OEO, most have used the criterion of 3,000 dollars for a family of four. Washington, D. C., with a maximum annual income requirement of 5,000 dollars for a family of four, has the highest income criterion in the country.[73]

Available statistics indicate that the Bar may have ignored a vast array of potential clients, and that the neighborhood law office may open-up a new market for legal services. In a recent study which involved a random sample of 800 lawyers in private practice in Manhattan and the Bronx, it was found that fewer than five percent reported that the median income of their clients was under 5,000 dollars a year, although half the families in New York City are in this category. Conversely, seventy percent of the attorneys reported that the median income of their clients was in excess of 10,000 dollars, although less than ten percent of New York's families and unrelated individuals had incomes that high.[74]

A final problem which has been largely overlooked by the commentators on the act is that of long-term financing. Once a program is initially funded by the OEO, it is presumed that local organizations will thereafter provide the necessary funds for its continuation. If not, the program will fail and the efforts of those concerned with providing legal services to the poor will have been of little avail. A possible solution is permanant government financing.

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69 See note 2 *supra* at 20.

70 See note 35 *supra* at 9.

71 Brownell, *supra* note 23 at 70.

72 See note 2 *supra* at 20.

73 Wald, *op cit. supra* note 55 at 74-75.

74 Address by Arthur J. Goldberg, National Conference on Law and Poverty, June 25, 1965, in GSA Doc. 65 20274, 15.

ALTERNATIVE SOLUTIONS

A possible alternative to the OEO Neighborhood Law Office is some form of "public lawyer" under a scheme like the English Legal Aid and Advice Act of 1949.[75] The aim of the Act is to make available to the public those legal services which a reasonable man would provide for himself had he sufficient means to do so. This system is organized so that the legal profession has complete control of its operation while the government's participation is limited to paying the costs of services which the clients cannot pay. The act provides that all legal work must be performed by lawyers in private practice, and that the relation between the private attorney and the client must be direct with no interposition of an official or organization.[76] The legal society establishes panels of lawyers for different phases of professional work. The success of the program is indicated by the fact that ninety percent of the English solicitors have placed their names on these panels.[77]

To secure assistance in court proceedings under the English act, the prospective client must qualify both as to financial need (700 pounds annual income, 500 pounds disposable capital) and as to "substantiality" of legal interest in that *he* must have a judicially cognizable case or controversy in which the remedy or relief sought has some probability of success. In addition, the applicant must be approved by the National Assistance Board. No legal representatives are required to be on this board. If the applicant's financial condition warrants it, he may be required to make a contribution to the legal aid fund, but the major part of the funds come from government appropriations.[78] It has been estimated that the cost of the program is twenty-five cents per capita.[79] The client is allowed to choose his advocate from the panels. From the legal aid fund the solicitor and barrister are paid ninety percent of the usual fees allowed on the taxation of costs in the Supreme Court.[80]

A simpler system is provided for mere advice. In these cases an applicant is entitled to legal advice if he convinces the solicitor that he cannot afford ordinary legal services. This system is also financed primarily by the government.

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[75] Legal Aid and Advice Act of 1949, 12, 13, 14 Geo. 6 c. 51. Similar acts are found in Northern Ireland and in Saskatchewan.

[76] Williams, "The English Legal Aid Scheme," 15 No. Ire. L.Q. 333, 340 (1964).

[77] *Id.* at 340.

[78] Cheatham, A Lawyer When Needed 46 (1963).

[79] Shabbits, "The Development of Legal Aid in England," 30 Sask. B.R. 98 at 107 (1965).

[80] Cheatham, *supra* note 78 at 46-47.

Would such a plan be feasible in the United States? Traditionally, Americans have believed that the government should not subsidize an activity unless the necessary private action has not been taken or has proven to be ineffective in curing the particular evil. This attitude is, however, constantly being eroded by the ever-increasing aid given to private organizations by state and federal governments.

Finally, another possibility is the retention of community supported lawyers as advocates for the poor. Public attorneys have functioned since 1910, and today are found in Bridgeport, Connecticut, Dallas, Kansas City, and St. Louis.[81]

Somewhat akin to the publicly employed counsel is the Ombudsman, who acts essentially as an impartial investigator and arbiter of grievances which for the most part are not judicially cognizable.[82] His function is to provide a remedy against abuses by public servants, on the central as well as the local level, and in the judicial sphere as well as the administrative. The Ombudsman is competent to act upon complaints made by individuals, but may also initiate action on his own.[83] The Ombudsman institution differs from all other existing legal aid systems in the sense that his activities are limited to the operations of governmental agencies and officials. An important function of the Ombudsman is the recommending of administrative changes. In addition he may bring proceedings in the courts against allegedly derelict officials. The Ombudsman then, in broad terms, is a law officer appointed by a governing body to supervise the activities of various categories of public servants and authorities. The institution of the Ombudsman has proven to be successful in Denmark, Sweden, West Germany, and New Zealand.[84]

The New Zealand Ombudsman may be taken as representative. In New Zealand the Ombudsman is appointed by Parliament for a three-year term. The office was "created to provide insurance against future administrative messes."[85] Anyone may lodge a complaint with the Ombudsman, but his functions are limited. He may not, for instance, investigate an administrative act which could be reviewed judicially. This places beyond his jurisdiction many matters that a litigant might wish to turn over to him rather than bear the expense and trouble of pursuing appellate remedies. Considering the continual in-

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81 Brownell, Legal Aid in the United States 92 (1951).

82 E. and J. Cohn, "The War on Poverty A Civilian Perspective," 73 Yale L.J. 1317, 1331 (1964).

83 Blix, "A Pattern of Effective Protection: The Ombudsman," 11 How. L.J. 386, 389 (1965).

84 Frankel, "Experiments in Serving the Indigent," 51 A.B.A.J. 460, 464 (1965).

85 Gellhorn, "The Ombudsman in New Zealand," 53 Calif. L. Rev. 1155, (1965).

crease in quantity of welfare legislation in the United States, some breed of Ombudsman might soon be needed to solve "administrative messes" here. It has also been suggested that a class of sub-professional specialists be developed to deal with the legal problems of the poor. A final suggestion is the allowance of an income tax deduction or credit for the payment of legal fees.[86]

CONCLUSION

At this point it should be clear that the poor do have legal problems, and that existing services are inadequate. Furthermore, it is suggested that if the members of the bar hope to avoid "Legicare," they will have to take the initiative and establish some program, consistent with the tradition and high standards of the profession, which provides sufficient legal services to everyone, regardless of inability to pay. The Economic Opportunity Act is indeed an "opportunity" in that it provides the wherewithall for offering these services and is flexible enough to allow considerable experimentation at the local level. As with any implementing legislation, there will be legal and political problems in its application. The legal profession has always sought to give effect to the maxim "equal justice under law". Hopefully the bar will practice this maxim by responding to the present opportunity for extending legal services to the poor.

Gerald E. Schmenk

[86] McAlpin, "Meeting the Challenge," 51 A.B.A.J. 1064, 1069 (1965).